

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-245-T - ORDER NO. 2004-630
DECEMBER 21, 2004

IN RE: Application of Moving With Moxie, Inc., 88) ORDER GRANTING
Shell Ring Road, Hilton Head Island, SC) CLASS E CERTIFICATE
29928 for a Class E (HHG) Certificate of)
Public Convenience and Necessity)

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Moving With Moxie, Inc. (the “Applicant”), 88 Shell Ring Road, Hilton Head Island, South Carolina, 29928, for a Class E Certificate of Public Convenience and Necessity to transport household goods as defined by R. 103-210(1) between points and places in South Carolina.

The Commission’s Executive Director instructed the Applicant to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene were received in this matter.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20(Supp. 2003) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor

vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs 103-102(1)(Supp. 2003) defines "Certificate of PC&N" as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2003) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

9. 26 S.C. Code Regs. 103-133 (Supp. 2003) is entitled "Proof Required to Justify Approving an Application" and provides in subsection (l) as follows:

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The

² By Commission Order No. 1999-654. dated September 15, 1999. (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by "small carrier" applicants in providing appropriate shipper witnesses. By Order No. 2000-024. dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654 to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.

- c. WILLING. Having met the requirements as to “fit and able,” the submitting of the application for operating authority would be sufficient demonstration of the applicant’s willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2003) is entitled “When Hearing May Be Held” and provides in relevant part that “[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

EVIDENCE OF RECORD

The hearing on the Application was held on November 10, 2004, at 2:30 p.m. in the offices of the Commission. The Honorable Randy Mitchell, Chairman, presided. Kerry B. McTigue, Esquire, appeared representing the Applicant. Applicant presented the testimony of Eric J. DeWeerd, a principal and co-owner of Moving With Moxie, Inc.; Todd Harrison, a principal and co-owner of Moving With Moxie, Inc.; Joan Herlong, Carol Sloop, William J. D. Guscio and Don Kever appeared as shipper witnesses. F. David Butler, General Counsel, represented the Commission Staff.

Mr. DeWeerd testified about his experience and background in business and specifically as to his past successful efforts owning and operating a small Cleveland-based company. He discussed the formation of Moving With Moxie, its mission and its

rationale for seeking certification as a household goods mover to service the state and primarily to service the Beaufort and Hilton Head areas. Mr. DeWeerd discussed the scope of authority which included points and places in South Carolina. Mr. DeWeerd testified that the company intends to join the South Carolina Tariff Bureau and that he is familiar with the motor carrier statutes and regulations.

Mr. Harrison testified concerning the company's business plan and financial ability to provide services in the state. Mr. Harrison explained his background and experiences in establishing and operating a moving company in Texas. Mr. Harrison testified that although Mr. DeWeerd would be the principal manager of Moving With Moxie's day to day operations, as co-owner, Mr. Harrison would impart his knowledge of operational and financial "best practices" to Mr. DeWeerd. Mr. Harrison also testified that he has consulted for numerous moving companies regarding how to best operate their businesses and would use this experience to ensure Moving With Moxie performed efficiently. Mr. Harrison also testified regarding the types and extent of necessary equipment and office space and employees Moving With Moxie would need to succeed. Mr. Harris also explained the statewide certification, if granted, would allow Moving With Moxie to transport household goods in the most efficient manner possible. He also testified that he and Mr. DeWeerd were willing to provide additional financial support to the corporation if needed. Todd Harrison provided evidence that the Applicant had arranged for purchase of a truck, obtained office space, purchased insurance and obtained equipment to begin operations.

Ms. Joan Herlong was a shipper witness for the company who testified about the need for another moving company in the upstate. She indicated that to her knowledge there were not enough upstate moving companies. She is currently employed as a Realtor with Prudential/C. Dan Joyner Co in the Greenville, South Carolina area. As a realtor, she is in a position to refer and/or work with her clients to locate a moving company. In addition, she testified concerning her own personal experiences in moves. Ms. Herlong testified that there was sufficient demand for another moving company in the upstate. Her testimony supported the Applicant's claim that there is a need for the services they would offer.

Mr. William J. D. "Will" Guscio was a shipper witness for the company who testified about the need for another moving company in the lowcountry. He indicated that to his knowledge there were not enough moving companies in the lowcountry. He is currently employed as a Realtor with Southeastern Commercial Services in the Bluffton/Hilton Head Island, South Carolina area. As a realtor, he is in a position to refer and/or work with his clients to locate a moving company. Mr. Guscio testified that there was sufficient demand for another moving company in the lowcountry. His testimony supported the Applicant's claim that there is a need for the services they would offer.

Mr. Don Keever was a shipper witness for the company who testified about the need for another moving company in the midlands. He indicated that to his knowledge there were not enough moving companies in the midlands. He is currently employed as a Realtor with The Wolfe Company in the Columbia, South Carolina area. As a realtor, he is in a position to refer and/or work with his clients to locate a moving company. Mr.

Keever testified that there was sufficient demand for another moving company in the midlands. His testimony supported the Applicant's claim that there is a need for the services they would offer.

Ms. Carol Sloop was a shipper witness for the company who testified about the need for another moving company in the state. She indicated that to her knowledge there were not enough moving companies in the state. She is currently employed as a Realtor with Century 21/Bob Capes Realtors in the Columbia, South Carolina area. As a realtor, she is in a position to refer and/or work with her clients to locate a moving company. Ms. Sloop testified that there was sufficient demand for another moving company in the state. Her testimony supported the Applicant's claim that there is a need for the services they would offer.

There were no intervenors in this matter, and no testimony was offered in opposition to the Application.

During the hearing, the Commission asked that the Mr. DeWeerd submit his personal financial statement to be filed as an exhibit and which Mr. DeWeerd did submit. The Commission also request Moving With Moxie, Inc. file as a late filed exhibit its Certificate of Authorization from the South Carolina Secretary of State. This was filed as an exhibit and received by the Commission on November 16, 2004.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Moving With Moxie, Inc. desires to provide moving services of household goods within and between points and places in South Carolina; and from points and places in South Carolina.

2. The Applicant, Moving With Moxie, Inc. is fit, willing, and able to provide and properly perform the services which it seeks to provide. “Fitness” has been demonstrated since the record contains (1) a certification that Moving With Moxie, Inc. through its principals, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) evidence that there are no outstanding judgments pending against Moving With Moxie, Inc. or its principals. “Able” was demonstrated by the evidence of record which reveals that Moving With Moxie, Inc. has the present ability to and has arranged for the necessary truck and equipment with which to perform moving services, and has similarly arranged for insurance which meets the minimum requirements set by this Commission, and will undergo an inspection of its equipment. The evidence of record also indicates that although a new company, Moving With Moxie, Inc.’s principal owners possess sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. “Willingness” was demonstrated by the filing of the Application and the testimony of the witnesses indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by Moving With Moxie, Inc. are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Applicant establish that the public convenience and necessity warrant the issuance of the

permit requested by the Applicant. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Moving With Moxie, Inc. has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that Moving With Moxie, Inc. has sufficiently demonstrated that the public convenience and necessity requires Moving With Moxie, Inc.'s proposed services as reflected in its application.

3. Based on the conclusions above, that Moving With Moxie, Inc. has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Moving With Moxie, Inc. should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):

Between Points and places in South Carolina; and from
points and places in South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Moving With Moxie, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved.

2. Moving With Moxie, Inc., shall file the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, a Certificate shall be issued to Moving With Moxie, Inc. authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

